IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.75 of 2006
KAMLESH PRASAD
Versus
PUJAN RAI &ORS

9/ 05.08.2008 The order under challenge is dated 03.12.2005 passed in Claim Case No. 58 of 2005 by the learned Additional District Judge-IX-Cum-Motor Accident Claims Tribunal, Patna, whereby and whereunder, he has allowed the interim claim petition dated 19.08.2005 filed by the claimants-respondents and directed the appellant to pay Rs. 50,000/-, who happens to be the owner of the erring vehicle of Truck No. H.R. No. 13/1696.

The learned counsel for the appellant has given emphasis that the truck in question belonging to this appellant was not at all involved in causing death of the deceased rather, simply it has been mistaken for the reason that it was standing by the side of the place where accident took place and driver had gone to have his lunch in the nearby hotel. This fact and objection raised on behalf of the appellant was not at all considered by the learned Tribunal while passing impugned order.

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Admitted position is that the truck in question was not insured at the relevant time.

The learned counsel for the claimants has also been heard.

It is disclosed from the impugned order that F.I.R. in Bihta P.S. Case No. 49 of 2005 was drawn and at the time when impugned order was passed investigation was in the process which was not completed.

This fact in respect of involvement of truck in question should be ascertained by the Tribunal itself by calling for the report of investigation from the concerned court and in case the police submitted charge sheet against the driver concerned, prima facie, it would be deemed that truck in question was involved in causing death of the deceased, and if, no such charge sheet has been submitted, the matter shall remain open for deciding the matter on merit so far, payment of Rs. 50,000/- by way of interim compensation to the claimants-respondents is concerned.

So after setting aside the impugned order, it is remitted to the Tribunal, for passing a fresh order, after giving both sides an opportunity of being heard and considering the objection raised on behalf of the appellant.

The amount so deposited by the appellant be remitted to the Tribunal.

The Tribunal is directed to dispose of the case preferably within three months from the date of receipt of a copy of this order.

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Sanjeet **(Subash Chandra Jha, J.)**